



INTERIOR BOARD OF INDIAN APPEALS

Joint Business Council of the Shoshone & Arapahoe Tribes v.
Acting Billings Area Director, Bureau of Indian Affairs

17 IBIA 118 (04/17/1989)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

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| JOINT BUSINESS COUNCIL OF THE | : | Order Dismissing Appeal |
| SHOSHONE AND ARAPAHOE | : | |
| TRIBES OF THE WIND RIVER | : | |
| RESERVATION, | : | |
| Appellant | : | |
| | : | Docket No. IBIA 89-10-A |
| v. | : | |
| | : | |
| ACTING BILLINGS AREA DIRECTOR, | : | |
| BUREAU OF INDIAN AFFAIRS, | : | |
| Appellee | : | April 17, 1989 |

On September 8, 1988, appellant Joint Business Council of the Shoshone and Arapahoe Tribes was awarded grant No. C50-G-1420-8016 under 25 U.S.C. § 450h (1982) and 25 CFR Part 272. Pursuant to the grant, appellant assumed full responsibility for enforcement of the Wind River Reservation Game Code, 25 CFR Part 244, which had been adopted as tribal law. In mid-October 1988, appellant determined that it would extend the hunting season for certain big-game animals. Following correspondence and meetings with personnel of the Billings Area Office, Bureau of Indian Affairs, and the Fish and Wildlife Service, in which unsuccessful attempts were made to persuade appellant not to extend the season, the Area Contracting Officer first suspended and then terminated appellant's grant. By letter of November 9, 1988, the Acting Area Director notified appellant that BIA would reassume responsibility for enforcement of the game code unless appellant responded by November 14. By letter of November 16, 1988, he notified appellant that the reassumption was effective immediately.

Appellant appealed to the Assistant Secretary - Indian Affairs, seeking reinstatement of the grant. On December 21, 1988, the Acting Assistant Secretary remanded the case to the Area Director with directions to attempt to resolve the matter. On December 23, 1988, the Area Contracting Officer reinstated the grant.

By request received by the Board on January 23, 1989, appellant sought to have the Board assume jurisdiction over its appeal. Because it appeared that the appeal might be subject to dismissal, either because the Board lacked jurisdiction over it or because it was moot, the Board ordered appellant to show cause why its appeal should not be dismissed.

Appellant's response to the show cause order was received on February 22, 1989. The Area Director did not file a reply.

Appellant argues that the Acting Assistant Secretary's remand of its appeal to the Area Director did not constitute the "written decision" required by former 25 CFR 2.19(a)(1) and that, therefore, the Board properly has jurisdiction

over the appeal pursuant to former 25 CFR 2.19(b). ^{1/} It also argues that the appeal is not moot because the Area Director and Area Contracting Officer are free to repeat their acts unless the Board rules that those acts were unlawful. Further, appellant states that it has a continuing stake in the issue on appeal because it has reserved the right to seek damages for the grant termination and to recover legal fees pursuant to section 110(c) of the Indian Self-Determination and Education Assistance Act as amended by the Act of October 5, 1988, P.L. 100-472, 102 Stat. 2285, 2295, and the Act of November 1, 1988, P.L. 100-581, 102 Stat. 2938, 2941. ^{2/}

The Board finds, contrary to appellant's argument, that the Acting Assistant Secretary's December 21, 1988, remand of their appeal was a "written decision" within the meaning of former 25 CFR 2.19(a)(1). Although appellant argues that nothing in former section 2.19 authorized the Assistant Secretary to remand an appeal to an Area Director, remand to a lower official or body is a well-established mechanism employed by courts and other appellate forums when further action is required in a case. The act of remanding a case is clearly an act of decision.

The December 21, 1988, decision was rendered by the Acting Assistant Secretary. Decisions of the Acting Assistant Secretary are equivalent to decisions of the Assistant Secretary. See Ute Mountain Ute Tribe v. Acting Assistant Secretary for Indian Affairs, 11 IBIA 168 (1983). Because the Assistant Secretary has the authority to issue decisions final for the Department, the Board does not have general review authority over such decisions, except as they are specially referred to it on a case-by-case basis or through rulemaking. See, e.g., Falcon Lake Properties v. Assistant Secretary--Indian Affairs, 15 IBIA 286 (1987); Pueblo of Laguna v. Assistant Secretary for Indian Affairs, 12 IBIA 80, 90 I.D. 521 (1983). Cf. new 25 CFR 2.6(c), 54 FR 6481. This matter has not been so referred to the Board.

^{1/} Former 25 CFR 2.19 provided in relevant part:

"(a) Within 30 days after all time for pleadings (including extension granted) has expired, the Commissioner of Indian Affairs [or BIA official exercising the administrative review authority of the Commissioner] shall:

"(1) Render a written decision on the appeal, or

"(2) Refer the appeal to the Board of Indian Appeals for decision.

"(b) If no action is taken by the Commissioner within the 30-day time limit, the Board of Indian Appeals shall review and render the final decision."

Revised 25 CFR Part 2 became effective on Mar. 13, 1989. 54 FR 6478 (Feb. 10, 1989)

^{2/} Section 110(c) provides:

"The Equal Access to Justice Act * * * shall apply to administrative appeals pending on or filed after the date of enactment of the Indian Self-Determination and Education Assistance Act Amendments of 1988 by tribal organizations regarding self-determination contracts."

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is dismissed for lack of jurisdiction.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge